

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,
vs.

Case No.: 2:14-cr-00284-GMN-DJA

ANTHONY OSHINSKI,

Defendant.

ORDER

ANTHONY OSHINSKI,

Pending before the Court is Defendant Anthony Oshinksis (“Defendant’s”) Motion for Compassionate Release, (ECF No. 141). The Government filed a Response, (ECF No. 144). Defendant has not yet filed a Reply.

For the reasons discussed below, the Court **GRANTS** Defendant's Motion for Compassionate Release.

I. BACKGROUND

On February 2, 2015, Defendant pleaded guilty to one count of Felon in Possession of a Firearm in violation of 18 U.S.C. § 922(g) and 924(a)(2). (Mins. Proceedings, ECF No. 18); (J., Indictment, ECF No. 1). The Court sentenced Defendant to 30 months' imprisonment, to be followed by 3 years' supervised release with special conditions, which commenced on January 12, 2018. (*See* Mins. Proceedings, ECF No. 26); (J., ECF No. 27); (Petition for Warrant, ECF No. 28). On February 10, 2021, Defendant's term of supervision was revoked and the Court sentenced him to 13 months' imprisonment, with no supervision to follow. (J. on Revocation, ECF No. 121). Defendant is presently in custody at Victorville Medium II Federal Correctional Institution ("Victorville II"). (*See* Mot. Compassionate Release ("MCR") 18:14–16, ECF No. 141).

1 On March 31, 2021, Defendant was assaulted in an unprovoked attack by another
2 inmate, resulting in multiple fractures to his jaw. (Medical Records at 82, 89, 92, 95, Ex. A to
3 MCR, ECF No. 142); (MCR 9:14–10:15). After being treated at the hospital, doctors
4 recommended Defendant for surgery “ASAP” and prescribed him a liquid diet consisting of
5 “nutridrink” because he was unable to fully open his mouth. (Medical Records at 12, 84, Ex. A
6 to MCR). Defendant reported “I have never felt so much pain in my life as how my face feels
7 now.” (*Id.* at 11). On April 6, 2021, Defendant received surgery for his injuries, but his jaw
8 will require additional treatment and possibly another surgical procedure. (*Id* at 13); (MCR
9 13:12–15). As of the filing of this Motion, Defendant reports that his jaw remains in
10 considerable pain and he is still unable to eat. (MCR 13:16–14:2). Further, Defendant claims
11 that he receives nutridrink only sporadically and otherwise subsists on a diet of Kool-Aid,
12 coffee, and pudding, which has resulted in significant weight loss. (*Id.*). Defendant now
13 petitions this Court for compassionate release based on his medical condition.

14 **II. LEGAL STANDARD**

15 The compassionate release provision of 18 U.S.C. § 3582(c)(1)(A), as amended by the
16 First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (Dec. 21, 2018), authorizes the sentencing
17 court to modify a term of imprisonment in limited circumstances, upon a motion by the
18 defendant. 18 U.S.C. § 3582(c)(1)(A). The sentencing court may order compassionate release,
19 “if after considering the factors set forth in 18 U.S.C. § 3553(a),” the defendant has
20 demonstrated: (1) he has exhausted his administrative remedies; and (2) “extraordinary and
21 compelling reasons” warrant a reduction in his sentence. 18 U.S.C. § 3582(c)(1)(A). The
22 Court must also consider whether a reduction in sentence is consistent with applicable policy
23 statements issued by the United States Sentencing Commission. *Id.* While there is currently no
24 applicable policy statement for § 3582(c)(1)(A) motions filed by a defendant, “the Sentencing
25 Commission’s statements in U.S.S.G § 1B1.13,” which apply to § 3582(c)(1)(A) motions filed

1 by the Bureau of Prisons (“BOP”), “may inform a district court’s discretion for § 3582(c)(1)(A)
2 motions filed by a defendant, but they are not binding.” *United States v. Aruda*, No. 20-10245,
3 2021 WL 1307884, at *4 (9th Cir. April 8, 2021). Under U.S.S.G. § 1B1.13, “extraordinary
4 and compelling reasons” include, among other things, age, terminal illnesses, and medical
5 conditions “that substantially diminish[] the ability of the defendant to provide self-care within
6 the environment of a correctional facility and from which he or she is not expected to recover.”
7 Further, prior to reducing a sentence, U.S.S.G. § 1B1.13 directs courts to determine whether the
8 defendant is a danger to the safety of any other person in the community. *Id.* The court may
9 also consider “other reasons” including a “reason other than, or in combination with” a reason
10 specifically provided in the Sentencing Guidelines. *Id.* The decision to grant compassionate
11 release is in the sentencing court’s discretion. *See United States v. Wade*, 2:99-cr-00257-CAS-3,
12 2020 WL 1864906, at *5 (C.D. Cal. Apr. 13, 2020).

13 **III. DISCUSSION**

14 As an initial matter, the parties do not dispute that Defendant properly exhausted his
15 administrative remedies. Therefore, the Court’s discussion will be limited to an analysis of
16 whether Defendant has presented extraordinary and compelling reasons for release, as well as
17 an assessment of the § 3553(a) factors.

18 Defendant argues that his broken jaw is a debilitating injury constituting an
19 extraordinary and compelling reason for compassionate release. (MCR 9:1–3). The Court
20 agrees. As noted above, “extraordinary and compelling reasons” for compassionate release
21 include medical conditions “that substantially diminish[] the ability of the defendant to provide
22 self-care within the environment of a correctional facility and from which he or she is not
23 expected to recover.” *See U.S.S.G. § 1B1.13*. In the present case, Defendant’s medical
24 condition has rendered him unable to eat, which undoubtedly diminishes his ability to care for
25 himself within a correctional setting. This is especially true if Victorville II is incapable of

1 consistently providing him with the prescribed liquid nutrition. Moreover, because Defendant's
2 treatment is progressing so slowly, the Court is persuaded that Defendant is unlikely to recover
3 from his debilitating jaw injury prior to his release on September 22, 2021.¹ Accordingly,
4 Defendant has demonstrated extraordinary and compelling reasons for release. *See also United*
5 *States v. Perez*, 451 F. Supp. 3d 288, 293 (S.D.N.Y. Apr. 1, 2020) (finding that an inmate with
6 a broken jaw and limited time remaining on his sentence established extraordinary and
7 compelling reasons for release).

8 Further, the factors found in 18 U.S.C. § 3553(a) weigh in favor of Defendant's release.
9 *See* 18 U.S.C. § 3582(c)(1)(A) (requiring courts to consider the § 3553(a) factors before
10 granting compassionate release). These factors include: (1) the nature and circumstances of the
11 offense and the history and characteristics of the defendant; (2) the need for the sentence
12 imposed; (3) the kinds of sentences available; (4) the kinds of sentence and the sentencing
13 range established in the Sentencing Guidelines; (5) any pertinent policy statement issued by the
14 Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among
15 defendants with similar records who have been found guilty of similar conduct; and (7) the
16 need to provide restitution to any victims. 18 U.S.C. § 3553(a).

17 In the present case, Defendant is serving a term of imprisonment for Grade C violations
18 of his supervised release conditions. The need for Defendant to continue serving the sentence
19 imposed is minimal: there is currently no vocational programming available at his correctional
20 institution, he does not present a danger to the community, and the extreme hardship he has
21 experienced while incarcerated is enough of a deterrent from future criminal activity.²
22 Additionally, Defendant's medical needs are not being met at Victorville II, and being released

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24 ¹ Defendant is currently scheduled to be released to a halfway house on September 22, 2021. (MCR 20:15–16,
ECF No. 141).

25 ² When evaluating the need for the sentence imposed, courts consider the sentence's deterrent effect, protection
of the public, and the effectively providing educational training and medical care. *See* 18 U.S.C. § 3553(a)(2).

1 would give him the opportunity to seek out more effective treatment on his own. Finally,
2 Defendant has a strong family support system that can provide stable housing and
3 transportation for needed medical care. (MCR 17:15–18:2). As such, the § 3553(a) factors
4 weigh in favor of release.

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1 **IV. CONCLUSION**

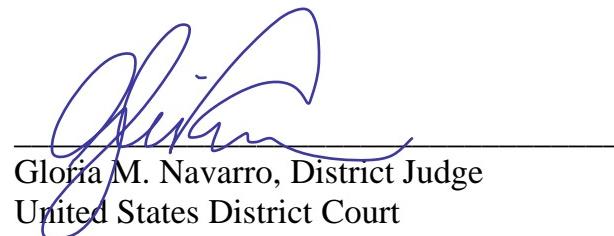
2 **IT IS HEREBY ORDERED** that Defendant's Motion for Compassionate Release,
3 (ECF No. 141), is **GRANTED**.

4 **IT IS FURTHER ORDERED** that Defendant's previously imposed sentence of 13
5 months' imprisonment is reduced to **TIME SERVED with no supervision to follow**.

6 **IT IS FURTHER ORDERED** that this order is **STAYED for up to fourteen days**, for
7 the verification of Defendant's residence and/or establishment of a release plan, to make
8 appropriate travel arrangements, and to ensure Defendant's safe release. Defendant shall be
9 released as soon as a residence is verified, a release plan is established, appropriate travel
10 arrangements are made, and it is safe for Defendant to travel. There shall be no delay in
11 ensuring travel arrangements. If more than fourteen days are needed to make appropriate travel
12 arrangements and ensure Defendant's safe release, the parties shall immediately notify the
13 Court and show cause as to why the stay should be extended.

14 **IT IS FURTHER ORDERED** that Defendant's Motion for Leave to File Exhibit Under
15 Seal, (ECF No. 142), is **GRANTED**.³

16 **DATED** this 17 day of June, 2020.

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Gloria M. Navarro, District Judge
United States District Court

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24 ³ The Exhibit contains Defendant's confidential medical records. Accordingly, the Court finds good cause to
25 seal the record. *See, e.g., Johnson v. Tambe*, No. 19-141-TSZ-MLP, 2019 WL 4014256, at *2 (W.D. Wash. Aug.
26, 2019) (finding the plaintiff's "privacy interest in his own medical records to be a sufficiently compelling
reason to seal the medical records themselves").